

# **EXHIBIT 1**

**Knudsen, Andrew (ENRD)**

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**From:** Johnathan Stone <Johnathan.Stone@oag.texas.gov>  
**Sent:** Monday, July 15, 2024 12:22 PM  
**To:** Lynk, Brian (ENRD)  
**Cc:** David Bryant; Kyle Tebo; Munera Al-Fuhaid; Zachary Berg; Kimball, Kimere (ENRD); Knudsen, Andrew (ENRD); Harrison, Bryan (ENRD); Wade, Landon (USATXW); Kruger, Mary (USATXW)  
**Subject:** [EXTERNAL] RE: Following up on proposed schedule for remaining discovery & Daubert motions  
**Categories:** Red category

Good Afternoon, Brian.

The proposed terms do not work.

As we stated before, we are agreeable to limiting the number of motions filed that will be heard at the hearing on July 25, 2024. Yet, once again, you've proposed limiting the *total* number of discovery/Daubert motions that can be filed in this case. We will not agree to this limitation.

We do not agree to omnibus motions that meet the 10-page limit. We've already seen you attach voluminous exhibits containing argument and objections in violation of the page limits. We may move to strike such motions if they violate the page-limits.

We do not agree to the 5 pm deadline today nor to 24-hours' notice before filing. We do not agree to waive our reply. We do not agree to extending the Joint Advisory. We do not agree to have the hearing held remotely on July 25 (you have local counsel).

Instead, let's go back to the original proposal. A maximum of two motions for each side due today (before midnight), with responses due Wednesday, and Replies due Friday. The hearing will be in person on July 25, 2024, unless the Court orders otherwise.

Kind regards,

**Johnathan Stone**  
Special Counsel  
Office of the Attorney General of Texas  
Telephone: (512) 936-2613  
[Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)

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**From:** Lynk, Brian (ENRD) <Brian.Lynk@usdoj.gov>  
**Sent:** Sunday, July 14, 2024 12:42 PM  
**To:** Johnathan Stone <Johnathan.Stone@oag.texas.gov>  
**Cc:** David Bryant <David.Bryant@oag.texas.gov>; Kyle Tebo <Kyle.Tebo@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Zachary Berg <Zachary.Berg@oag.texas.gov>; Kimball, Kimere (ENRD)

<Kimere.Kimball@usdoj.gov>; Knudsen, Andrew (ENRD) <Andrew.Knudsen@usdoj.gov>; Harrison, Bryan (ENRD) <Bryan.Harrison@usdoj.gov>; Wade, Landon (USATXW) <Landon.Wade@usdoj.gov>; Kruger, Mary (USATXW) <Mary.Kruger@usdoj.gov>

**Subject:** Following up on proposed schedule for remaining discovery & Daubert motions

Good afternoon Johnathan,

This follows our email discussion over the past week as we have sought to agree on a schedule for briefing any further discovery or Daubert motions for hearing by Judge Powell. We believe the following is fair to both parties and accounts for the two possible later-arising grounds for motions Texas identified in an email last Wednesday, July 10 (not part of the thread below).

We include in the provisions below a joint request for remote hearing on July 25, to which Judge Howell stated he was amenable during the July 2 status conference. This would mitigate the otherwise significant travel burden of the case in recent as well as coming weeks.

The proposal follows:

- (1) Except as noted in (4) and (5) below, each party agrees to file no more than two additional Daubert and/or discovery motions. Such motion or motions may be filed in omnibus form raising multiple Daubert and/or discovery issues, provided they comply with the Local Rules' 10-page limit.
- (2) For any discovery or Daubert issue not previously raised, and except as noted in (4) and (5) below, notice of motion must be given: (a) no later than 5PM CT on July 15; and (b) at least 24 hours before filing the motion.
- (3) Except as noted in (4) and (5) below, any additional Daubert and/or discovery motions must be filed no later than July 16. Oppositions must be filed no later than July 19.
- (4) In the event TX determines it will file a motion to compel further responses to its 2d RFPs to the US, it will give notice of motion: (a) no later than 5PM CT on July 18; and (b) at least two full business days before filing the motion to allow adequate time for meet and confer on document production issues. Such motion shall be filed no later than 5PM CT on July 22, with the opposition due by 5PM CT on July 24.
- (5) In the event TX determines it will file a motion relating to the United States' rebuttal expert Mike Chapman, the United States waives any timeliness objection provided that the motion is filed no later than July 26 in accordance with ECF 97. The United States reserves all other arguments or objections in response to such a motion.
- (6) Each party foregoes a written reply for all not-yet-filed motions that will be heard on July 25.
- (7) The parties jointly request that the deadline for the Joint Advisory required by ECF 145 be extended until noon CT on July 24.
- (8) The parties jointly request that the hearing on July 25 be conducted remotely.

Please confirm if this is acceptable.

Best regards,

Brian H. Lynk  
Senior Trial Counsel  
Environmental Defense Section  
Environment & Natural Resources Division  
U.S. Department of Justice

202.514.6187

[brian.lynk@usdoj.gov](mailto:brian.lynk@usdoj.gov)

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**From:** Lynk, Brian (ENRD)

**Sent:** Friday, July 12, 2024 8:51 AM

**To:** Johnathan Stone <[Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)>

**Cc:** David Bryant <[David.Bryant@oag.texas.gov](mailto:David.Bryant@oag.texas.gov)>; Kyle Tebo <[Kyle.Tebo@oag.texas.gov](mailto:Kyle.Tebo@oag.texas.gov)>; Munera Al-Fuhaid <[Munera.Al-Fuhaid@oag.texas.gov](mailto:Munera.Al-Fuhaid@oag.texas.gov)>; Zachary Berg <[Zachary.Berg@oag.texas.gov](mailto:Zachary.Berg@oag.texas.gov)>; Kimball, Kimere (ENRD) <[Kimere.Kimball@usdoj.gov](mailto:Kimere.Kimball@usdoj.gov)>; Knudsen, Andrew (ENRD) <[Andrew.Knudsen@usdoj.gov](mailto:Andrew.Knudsen@usdoj.gov)>; Harrison, Bryan (ENRD) <[Bryan.Harrison@usdoj.gov](mailto:Bryan.Harrison@usdoj.gov)>; Wade, Landon (USATXW) <[LWade1@usa.doj.gov](mailto:LWade1@usa.doj.gov)>

**Subject:** Re: [EXTERNAL] Re: Proposed schedule for discovery & Daubert motions, & notice of motion re: Kathy Alexander

Good morning Johnathan,

We would agree to a limit of two further discovery and/or Daubert motions per party, for purposes of additional briefing under Judge Howell's schedule, which would not affect the number of "motions in limine" either party may file by July 26 under Judge Ezra's schedule.

We would not agree to any condition that motions related to the jury demand be decided "first." That is the up to the Court's discretion. Moreover, the motions relating to the jury demand remain with Judge Ezra; the schedule we discuss now relates to those that he referred to Judge Howell. Judge Howell has not been referred any scheduling or decision-making responsibility over the jury demand motions.

Best regards,

Brian H. Lynk  
Senior Trial Counsel  
Environmental Defense Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
202.514.6187

Sent from my iPhone

On Jul 11, 2024, at 10:01 PM, Johnathan Stone <[Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)> wrote:

Brian,

The only new motions that will be heard at the upcoming hearing are those that we both parties agree on such that briefing can be completed by July 19, 2024. We are agreeable to a briefing schedule for a limited number of new motions given the ongoing depositions, the number of motions that are already pending, and the need to meaningfully meet and confer on the new motions. We think two new motions for each side is reasonable under these existing conditions.

Additionally, a limitation on new motions will allow the Court more time to decide Texas's jury demand. The jury issue is likely determinative to the adjudication of *Daubert* motions, because

the reliability of expert witnesses is scrutinized more strictly in the context of jury trials than in the context of bench trial. See *Gibbs v. Gibbs*, 210 F.3d 491, 500 (5th Cir. 2000) (stating “[m]ost of the safeguards provided for in Daubert are not as essential” for bench trials); *H.L. Hawkins, Jr., Inc. v. Capitan Energy, Inc.*, 2023 WL 4216103 at \*8 (W.D. Tex. June 27, 2023) (stating “in a bench trial, the trial court's jury 'gatekeeping' role is minimized due to the absence of a jury”). The Court needs to resolve the jury demand issue *prior* to ruling on the motions to exclude experts. This uncertainty is another reason for holding off on extensive expert-related motion practice.

Kindly let us know whether the DOJ agrees to limit the number of new motions it files on Monday to two such that the parties can proceed with an agreed briefing schedule.

I will get the amended Rule 30(b)(6) notice for CBP to you by the end of the day and, hopefully, also respond to any outstanding matters.

Kind regards,

**Johnathan Stone**  
Special Counsel  
Special Litigation Division

Office of the Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711  
Telephone: (512) 936-2613  
[Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)

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<image002.png>

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**From:** Johnathan Stone  
**Sent:** Wednesday, July 10, 2024 8:48:44 PM  
**To:** Lynk, Brian (ENRD) <[Brian.Lynk@usdoj.gov](mailto:Brian.Lynk@usdoj.gov)>; David Bryant <[David.Bryant@oag.texas.gov](mailto:David.Bryant@oag.texas.gov)>; Kyle Tebo <[Kyle.Tebo@oag.texas.gov](mailto:Kyle.Tebo@oag.texas.gov)>; Munera Al-Fuhaid <[Munera.Al-Fuhaid@oag.texas.gov](mailto:Munera.Al-Fuhaid@oag.texas.gov)>; Zachary Berg <[Zachary.Berg@oag.texas.gov](mailto:Zachary.Berg@oag.texas.gov)>  
**Cc:** Kimball, Kimere (ENRD) <[Kimere.Kimball@usdoj.gov](mailto:Kimere.Kimball@usdoj.gov)>; Knudsen, Andrew (ENRD) <[Andrew.Knudsen@usdoj.gov](mailto:Andrew.Knudsen@usdoj.gov)>; Harrison, Bryan (ENRD) <[Bryan.Harrison@usdoj.gov](mailto:Bryan.Harrison@usdoj.gov)>; Wade, Landon (USATXW) <[Landon.Wade@usdoj.gov](mailto:Landon.Wade@usdoj.gov)>  
**Subject:** RE: Proposed schedule for discovery & Daubert motions, & notice of motion re: Kathy Alexander

How many motions do you anticipate filing?

Kind regards,

**Johnathan Stone**

Special Counsel

Office of the Attorney General of Texas

Telephone: (512) 936-2613

[Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)

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**From:** Lynk, Brian (ENRD) <[Brian.Lynk@usdoj.gov](mailto:Brian.Lynk@usdoj.gov)>

**Sent:** Wednesday, July 10, 2024 4:52 PM

**To:** Johnathan Stone <[Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)>; David Bryant <[David.Bryant@oag.texas.gov](mailto:David.Bryant@oag.texas.gov)>; Kyle Tebo <[Kyle.Tebo@oag.texas.gov](mailto:Kyle.Tebo@oag.texas.gov)>; Munera Al-Fuhaid <[Munera.Al-Fuhaid@oag.texas.gov](mailto:Munera.Al-Fuhaid@oag.texas.gov)>; Zachary Berg <[Zachary.Berg@oag.texas.gov](mailto:Zachary.Berg@oag.texas.gov)>

**Cc:** Kimball, Kimere (ENRD) <[Kimere.Kimball@usdoj.gov](mailto:Kimere.Kimball@usdoj.gov)>; Knudsen, Andrew (ENRD) <[Andrew.Knudsen@usdoj.gov](mailto:Andrew.Knudsen@usdoj.gov)>; Harrison, Bryan (ENRD) <[Bryan.Harrison@usdoj.gov](mailto:Bryan.Harrison@usdoj.gov)>; Wade, Landon (USATXW) <[Landon.Wade@usdoj.gov](mailto:Landon.Wade@usdoj.gov)>

**Subject:** RE: Proposed schedule for discovery & Daubert motions, & notice of motion re: Kathy Alexander

Johnathan,

Given that the schedule permitted Texas to serve its expert reports more than a month later than the United States—and that, due in part to the number of Texas's experts, it will take the United States until tomorrow to finish deposing them—your proposal to limit each party to no more than 2 new motions would obviously prejudice the United States. We were not fairly in a position to evaluate potential motions at the same time that Texas was, either on *Daubert* issues or expert-related disclosure issues (e.g., the issue we raised last night concerning Dr. Alexander). Thus, your suggestion would not work.

We will consider by tomorrow if there is any alternative refinement to our earlier proposal that we could suggest.

Best regards,  
Brian

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**From:** Johnathan Stone <[Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)>

**Sent:** Wednesday, July 10, 2024 5:33 PM

**To:** Lynk, Brian (ENRD) <[Brian.Lynk@usdoj.gov](mailto:Brian.Lynk@usdoj.gov)>; David Bryant <[David.Bryant@oag.texas.gov](mailto:David.Bryant@oag.texas.gov)>; Kyle Tebo <[Kyle.Tebo@oag.texas.gov](mailto:Kyle.Tebo@oag.texas.gov)>; Munera Al-Fuhaid <[Munera.Al-Fuhaid@oag.texas.gov](mailto:Munera.Al-Fuhaid@oag.texas.gov)>; Zachary Berg <[Zachary.Berg@oag.texas.gov](mailto:Zachary.Berg@oag.texas.gov)>

**Cc:** Kimball, Kimere (ENRD) <[Kimere.Kimball@usdoj.gov](mailto:Kimere.Kimball@usdoj.gov)>; Knudsen, Andrew (ENRD) <[Andrew.Knudsen@usdoj.gov](mailto:Andrew.Knudsen@usdoj.gov)>; Harrison, Bryan (ENRD) <[Bryan.Harrison@usdoj.gov](mailto:Bryan.Harrison@usdoj.gov)>; Wade, Landon (USATXW) <[LWade1@usa.doj.gov](mailto:LWade1@usa.doj.gov)>

**Subject:** [EXTERNAL] RE: Proposed schedule for discovery & Daubert motions, & notice of motion re: Kathy Alexander

Brian,

I'm following up on my earlier email to clarify our agreement. We are agreeable to this briefing schedule for next week provided it only applies to discovery and *Daubert* motions that will be heard by the Magistrate at the scheduled hearing AND that the parties agree to limit the number of new motions to two for each side. We already have a number of pending motions and, given the deposition schedule, we cannot meaningfully meet-and-confer and brief responses to a dozen daubert and discovery motions on such a short timeline.

Kind regards,

**Johnathan Stone**  
Special Counsel  
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[Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)

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**From:** Lynk, Brian (ENRD) <[Brian.Lynk@usdoj.gov](mailto:Brian.Lynk@usdoj.gov)>  
**Sent:** Wednesday, July 10, 2024 12:12 AM  
**To:** Johnathan Stone <[Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)>; David Bryant <[David.Bryant@oag.texas.gov](mailto:David.Bryant@oag.texas.gov)>; Kyle Tebo <[Kyle.Tebo@oag.texas.gov](mailto:Kyle.Tebo@oag.texas.gov)>; Munera Al-Fuhaid <[Munera.Al-Fuhaid@oag.texas.gov](mailto:Munera.Al-Fuhaid@oag.texas.gov)>; Zachary Berg <[Zachary.Berg@oag.texas.gov](mailto:Zachary.Berg@oag.texas.gov)>  
**Cc:** Kimball, Kimere (ENRD) <[Kimere.Kimball@usdoj.gov](mailto:Kimere.Kimball@usdoj.gov)>; Knudsen, Andrew (ENRD) <[Andrew.Knudsen@usdoj.gov](mailto:Andrew.Knudsen@usdoj.gov)>; Harrison, Bryan (ENRD) <[Bryan.Harrison@usdoj.gov](mailto:Bryan.Harrison@usdoj.gov)>; Wade, Landon (USATXW) <[Landon.Wade@usdoj.gov](mailto:Landon.Wade@usdoj.gov)>  
**Subject:** Proposed schedule for discovery & Daubert motions, & notice of motion re: Kathy Alexander

Good evening counsel,

The Court's order of July 2, 2024 (attached), ECF 145 requires the parties to confer on a briefing schedule for any further discovery and *Daubert* motions and to file it with the Court. We met and conferred last Friday, July 5, 2024, on 30(b)(6) issues but did not have time then to discuss the discovery and *Daubert* motion briefing schedule. As it is difficult to schedule a call in the midst of so many depositions this week, the United States proposes that we submit the following schedule proposal to the Court:

1. Any additional discovery or *Daubert* motions by either party to be filed no later than Monday, July 15;
2. Oppositions due no later than Thursday, July 18; and
3. Replies, if any, due no later than Friday, July 19. That is the date on which ECF 145 requires completion of briefing.

We also write to give Texas notice that the United States intends to move to exclude Kathy Alexander's expert testimony for failure to comply with Fed. R. Civ. P. 26(a)(2)(B).

Fed. R. Civ. P. 26(a)(2)(B) requires an expert witness to provide a written report "if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony."

In Texas's June 7, 2024 Rule 26(a)(2) expert disclosures, it stated that "Dr. Alexander is not retained or specially employed to provide expert testimony in this case or a person whose duties regularly involve giving expert testimony."

Texas's amended expert disclosures on June 14, 2024, contradicted the June 7 statement and also were internally contradictory concerning Dr. Alexander. The June 14 document stated that "Dr. Alexander is not retained or specially employed to provide expert testimony in this case. Dr. Alexander is [sic] person whose duties regularly involve giving expert testimony in matters relating to water rights permitting and management in Texas." The document did not highlight or call attention to this change. Yet, it went on to state that "Dr. Alexander provided the information required by Fed. R. Civ. P. 26(a)(2)(C) on June 14, 2024," thus maintaining the position that Fed. R. Civ. P. 26(a)(2)(B) did not apply to Dr. Alexander.

Dr. Alexander's testimony at her deposition on July 8, 2024, clears up any confusion on this point. She confirmed under oath that in her role as Senior Policy and Technical Analyst at TCEQ, her duties regularly involve giving expert testimony. Thus, she was required to disclose a report under Fed. R. Civ. P. 26(a)(2)(B), and her failure to do so by the Court-ordered deadline of June 14, 2024, violates that rule and is grounds to exclude her expert testimony. Please let us know if Texas opposes this motion.

Best regards,

Brian H. Lynk  
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